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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Human rights and mass exoduses

Report of the Secretary-General

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I. INTRODUCTION

1. In its resolution 44/164 of 15 December 1989, the General Assembly, inter alia, again invited all Governments and intergovernmental and humanitarian organizations concerned to itensify their co-operation with and assistance to world-wide efforts to address the serious problems resulting from mass exoduses of refugees and displaced persons, and also the causes of such exoduses; requested all Governments to ensure the effective implementation of the relevant international instruments, in particular in the field of human rights, as that would contribute to averting new massive flows of refugees and displaced persons; invited the Commission on Human Rights to keep the question of human rights and mass exoduses under review with a view to supporting the early warning arrangement instituted by the Secretary-General to avert new massive flows of refugees and displaced persons; took note of the report of the Secretary-General on human rights and mass exoduses (A/44/622), and invited him to inform the Assembly in future reports on the modalities of early warning activities to avert new and massive flows of refugees; specially encouraged the Secretary-General to continue to discharge the task described in the report of the Group of Governmental Experts on International Co-operation to Avert New Flows of Refugees (A/41/324, annex); requested the Secretary-General to continue to develop the role of the Office for Research and the Collection of Information of the Secretariat as a focal point for the operation of an effective early warning system and the strengthening of co-ordination of information-gathering and analysis among United Nations agencies with a view to preventing new massive flows of refugees and displaced persons; urged the Secretary-General to use the resources available to consolidate and strengthen the system for undertaking early warning activities in the humanitarian area by, inter alia, early computerization of the Office for Research and the Collection of Information and strengthened co-ordination among the relevant parts of the United Nations system, especially that Office as well as the Office of the United Nations High Commissioner for Refugees, the Centre for Human Rights of the Secretariat and the relevant specialized agencies; and requested the Secretary-General to report to the General Assembly at its forty-fifth session on the strengthened role that he is playing in undertaking early warning activities, especially in the humanitarian area, as well as on any further developments relating to the recommendations contained in the report of the Group of Governmental Experts.

2. The Commission on Human Rights, in its resolution 1990/52 of 6 March 1990, while reiterating the above-mentioned invitation and request addressed to all Governments and international organizations concerned, inter alia, welcomed the call by the Executive Committee of the Programme of the United Nations High Commissioner for Refugees for a working group to examine refugee protection and durable solutions in a coherent and comprehensive manner; requested the Secretary-General to continue to develop the role of the Office for Research and the Collection of Information to strengthen the co-ordination of information-gathering and analysis with agencies so as to provide early warning of developing situations requiring the attention of the Secretary-General, as well as to provide a focal point within the United Nations system for policy response, including identification of policy options for the Secretary-General; also requested the Secretary-General to make the necessary information available to the

competent United Nations organs; urged the Secretary-General to use the resources available to consolidate and strengthen the system for undertaking early warning activities in the humanitarian area; and looked forward to the report of the Secretary-General to the General Assembly at its forty-fifth session.

3. In view of his reporting responsibility under those resolutions the Secretary-General, on 30 April 1990, addressed notes verbales to all Governments and letters to United Nations bodies, specialized agencies and intergovernmental and non-governmental organizations concerned and requested them to provide him with information and views relating to the recommendations contained in the report of the Group of Governmental Experts. The replies received from Belgium, Burundi, Ecuador, the Federal Republic of Germany, Panama, Poland, Portugal, Sweden, Tunisia and Turkey are reproduced in annex I. The replies received from the Office of the United Nations High Commissioner for Refugees, the Food and Agriculture Organization of the United Nations and the World Health Organization, as well as those from the International Federation Terre des Hommes and the League of Red Cross and Red Crescent Societies are reproduced in annexes II and III respectively.

II. ACTION TAKEN BY THE SECRETARY-GENERAL

4. In accordance with General Assembly resolution 44/164 and Commission on Human Rights resolution 1990/52, as well as other relevant resolutions, the Secretary-General, with the assistance of the Office for Research and the Collection of Information, keeps under regular consideration the matters related to human rights and mass exoduses and has continued to make concerted efforts to consolidate, enhance and strengthen the role of the United Nations in undertaking early warning activities, including in the humanitarian area, in the light of the recommendations contained in the report of the Group of Governmental Experts.

5. As part of a firmly established process of monitoring political developments likely to have a bearing on the maintenance of international peace and security, the Office has continued to provide the Secretary-General with information regarding various acute situations, in different parts of the world, which were likely to generate new mass flows of refugees and other displaced persons. The Secretary-General has engaged in quiet diplomacy to affect some of these situations.

6. The Office has also been engaged in articulating new ideas to refine the developing early warning system and in advocating additional measures of inter-agency co-operation and co-ordination necessary for making such a system fully operational.

7. The computerization of the Office has advanced slowly in the past year, owing to budgetary constraints. Attempts to obtain additional funding have so far not been successful, but the Office remains fully committed to effective computerization at the earliest date possible and efforts are currently under way to obtain funding for another short-term engagement of an outside expert.

8. The Joint Inspection Unit, acting on a suggestion of the Office, had agreed to undertake a study on the co-ordination of early warning activities with regard to

potential refugee outflows. The report of the Unit will be submitted to the Assembly at its forty-fifth session. The recommendations of the Unit, appropriately implemented, should contribute to the better co-ordination of early warning activities of the United Nations system to avert new flows of refugees.

9. Even before the issuance of that report, some steps for improved co-ordination had already been taken. In early 1990 the Secretary-General sent letters to several heads of agencies and programmes and called for close co-operation with a view to furthering the development of an integrated early warning capacity regarding new massive flows of refugees and displaced persons.

Annex I

Replies received from Member States

BELGIUM

[Original: French]

[3 July 1990]

1. The Government of Belgium notes that, since the adoption of the conclusions and recommendations contained in General Assembly resolution 41/70 of 3 December 1986, purely economic factors have caused large and increasing flows of refugees and asylum-seekers. These refugees are leaving their countries in the hope of finding better economic conditions and social benefits, and taking advantage of generous legislation on political asylum.

2. The Belgian Government believes that closer attention should be given to this phenomenon. It would also like to see greater emphasis placed on the role of certain organizations, which act through illegal channels and for purely mercenary reasons.

BURUNDI

[Original: French]

[14 August 1990]

1. The positive law of Burundi contains no legislative provision covering human rights and mass exoduses.

2. Furthermore, Burundi is co-operating with other States, particularly its neighbours, in an endeavour to find solutions to the refugee problem. It encourages the repatriation of refugees and helps them resettle, as evidenced by the massive return of refugees displaced by the events in Ntega and Marangara in August 1988.

ECUADOR

[Original: Spanish]

[30 July 1990]

1. Developments regarding the international protection of refugees have demonstrated the profound humanitarian concerns underlying the policies of every Government that has pledged to discharge its international obligations. Perhaps

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the most important of these, and one which Ecuador has particularly emphasized, is the admission of refugees and asylum-seekers, in accordance with internationally recognized humanitarian norms.

2. The Government of Ecuador also has used every resource at its disposal to protect refugees by guaranteeing their right to life, liberty and security. These rights entail protection against loss of life, injury and other physical and psychological harm.

3. The effective implementation of all relevant international instruments, particularly those pertaining to human rights, should make it possible to avert new massive flows of refugees and their displacement to regions which for the most part are unable to accept them. This does not mean that States should adopt hasty administrative measures and/or selection procedures to process requests for refuge or asylum, particularly those deemed "excessive" or "clearly unjustified".

4. The solution to mass exoduses of refugees lies neither in applying a very strict interpretation of the concept of refugee as defined in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, nor in confronting applicants with unrealistic requirements. Rather, the solution lies in the full observance of the principles enshrined in the United Nations Charter and in recourse to peaceful means for the settlement of international disputes. In this way, human behaviour will be governed by the rule of law and respect for international peace and order, and if the civil, political, environmental and social rights of peoples are respected, they will have no reason to abandon their homelands.

5. The Political Constitution of Ecuador states the following: "Article 3. The Ecuadorian State respects the principles of international law: it proclaims the juridical equality of States; it advocates the peaceful settlement of disputes between nations, the association of States for the purpose of co-operation and the economic and social integration of its people, particularly Ibero-Americans, who are united by bonds of solidarity and interdependence born from their shared origin and culture" and "Article 4. The Ecuadorian State condemns all forms of colonialism, neo-colonialism and racial discrimination. It recognizes the right of peoples to liberate themselves from these oppressive systems."

6. On 4 July 1979 a series of amendments to the Penal Code were adopted expressly prohibiting actions which incite or encourage racial discrimination as well the practice of racial discrimination, and establishing appropriate sanctions against persons who violate those provisions.

7. In section III of the Constitution, concerning the legal status of aliens, article 14 states: "Aliens generally enjoy the same rights as Ecuadorians, within the limits established in the Constitution and by law ...".

8. Ecuador discharges the broad humanitarian mandate to promote and encourage respect for human rights, as called for in the United Nations Charter and as carried out in practice by the Secretary-General.

9. Ecuador signed the International Covenant on Civil and Political Rights on 4 April 1968, ratified that instrument in a Decree dated 9 February 1969, and deposited its instrument of ratification on 6 March 1969. The status of the Pact as a binding juridical norm is guaranteed by the fact that it has been incorporated in domestic law, for the Ecuadorian legal system attaches primacy first to the Constitution, then to legislation arising out of treaties and other international instruments ratified by the Government and, lastly, to domestic laws.

FEDERAL REPUBLIC OF GERMANY

[Original: English]

[30 May 1990]

The comments of the Government of the Federal Republic of Germany were included in document A/44/622, annex I.

PANAMA

[Original: Spanish]

[4 July 1990]

1. Massive flows of refugees are caused by various political, economic and social problems which often are interrelated and are affected by the international situation. Such flows may have an impact on political and social stability as well as on the economic development of the receiving States, and also may adversely affect the economies of the countries of origin and regions within those countries, thereby endangering international peace and security.

2. Furthermore, in view of the complexity, magnitude and potentially destabilizing nature of the impact of massive flows of refugees, the entire international community, and the Republic of Panama, in particular, are keenly interested in averting such flows, whether emanating from or entering our territory. Accordingly, and given the nature of the problem, the task of averting massive flows of refugees requires increased international co-operation at all levels, particularly within the framework of the United Nations, as well as full respect for the principle of non-intervention in the internal affairs of sovereign States, on the basis of respect for human rights and democratic self-determination.

3. We also wish to reiterate our full readiness to help eliminate mass exoduses and, to that end, the Republic of Panama, as a party to the Convention relating to the Status of Refugees a/ and the Protocol relating to the Status of Refugees of 1967, b/ endorses the recommendations of the 1984 Cartagena Declaration, and its domestic policy with respect to refugees is one of co-operation with the international community.

POLAND

[Original: English]

[13 August 1990]

1. In an attempt to systematize the problem and having adopted the passage of time as a criterion, three phases of the phenonmenon may be observed:

(a) The first, initial phase, is occasioned by the accumulation of conditions conducive to and in the final outcome resulting in a flow of refugees;

(b) The second, the phase proper, is the onset and continuation of a mass exodus of refugees from their native country;

(c) The third and final phase is the control and elimination of the flow, effected though the application of diverse solutions (repatriation, assimilation, transplantation to third countries).

2. Simultaneously, there are three parties interested in resolving these situations: the State generating refugees; the State or States where the refugees find shelter; and the international community (on the generally accepted assumption that the problem of refugees is a global problem).

3. What gives cause for anxiety and needs changing is that international co-operation in this area most often does not take place until the third phase. Undoubtedly, it would be desirable for this co-operation to be extended to the second and especially the first phase. In effect, the objective would be to prevent temporary outflows of refugees and not - as has been the practice hitherto - having the international community concentrate efforts on stemming the flow and reinstating prior circumstances, when the situation itself could have been avoided.

4. In general, one may speak of three causes for outflows of refugees on a mass scale: (a) natural disasters; (b) disrespect of human rights; and (c) man-made disasters.

5. Only in reference to the situation when the fundamental human rights are not respected has the international community worked out relevant international agreements and established international institutions for protection and assistance to those persons who were forced to leave their native country for these very reasons.

6. As concerns man-made disasters, they are caused by factors having a political character (armed conflicts, colonialism, apartheid, violation of human rights) and by those of social and economic character (a continuing colonial backwardness, effects of world crises, indebtedness, inflation etc.).

7. In respect of Europe itself, it seems that in the near future there may be a significant increase of immigration processes and a mass exodus of people from the Central and Eastern European States to Western Europe. A number of those people may have grounds for applying for refugee status, a number will be in a refugee-like situation and a number will simply be emigrating for economic reasons. The first symptoms of such a phenomenon have already made themselves visible: in 1989 about 1.3 million persons emigrated from Eastern Europe, while in previous years only an average of 1,000 per annum.

8. Is Europe prepared for such a development of the situation? It appears that in order to counteract the unimaginable suffering and tragedy of millions of human beings, the possible causes for mass scale migrations should be removed, which means well-placed economic assistance and assistance in the area of management. Training programmes encompassing law and praxis of the Western democracies are indispensable, and this concerns all the countries of Eastern Europe which are also rapidly transforming their political structures and moving towards democracy.

9. Additionally, one should strive for the creation of an European system of protection of refugees and a relevant, regional immigration mechanism. Of particular importance would be to include all the former socialist States in the system contained in the 1951 Convention on the Status of Refugees, a/ as well as the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (A/33/417, annex II).

10. Moreover, since a mass exodus of people is relatively often the aftermath of political decisions (deprivation of human rights, armed conflicts), then the resolution of the problem (together with counteraction) should also be sought in political decision. Until now the international community has done much on the humanitarian level. The United Nations High Commissioner for Refugees has been appointed to extend protection over and render assistance to refugees, but his statutory purpose is apolitical, as an institution restricted to assistance in the humanitarian sense. Aside from these considerations it would also seem that the definition of a refugee contained in the 1951 Convention should be subjected to certain modification to include all mass migration of persons having a compulsory character. One useful pointer in the right direction - and, as it appears, tested in practice - may be the definition contained in the 1969 Organization of African Unity Convention governing the specific aspects of refugee problems in Africa c/ and the Cartagena Declaration from 1984. Thus hitherto formulations do not fulfil the requirements in their entirety, mostly because of concentrating the attention and activities of the international community on the phase of the phenomenon where a wave of refugees has become a fact. In consequence, it seems that the initiative to endow the Secretary-General with certain authority in this sphere (General Assembly resolution 44/164), empowering him with relevant political initiative (which proved effective in practice in the case of Afghan refugees) and the competence to put forward suggestions for a political resolution of the phenomenon, and also, first and foremost, prevent it occuring, is worthy of support.

11. Furthermore, it appears necessary to have all European States participating in the global system of protection and assistance to refugees envisaged in the Convention of 1951. Precisely speaking, in the opinion of individual States this

may seem needless (e.g. Poland, as indeed do other Eastern European countries, mostly generates refugees but has extended protection to over a thousand or so other refugees), however, considering the necessity to undertake activities on a global scale (e.g. the refugees in Poland have been generated by non-European countries) this transpires as an absolute must. Poland is here a good example for presenting how the sense of responsibility forbears any differentiation between countries generating and those receiving refugees, as these are but two aspects of one phenomenon and one cannot be separated from the other. The accession to the European human rights Convention of 1950 should be treated in the same way as is indirectly suggested both in General Assembly resolution 44/164 and the Human Rights Commission resolution 1990/52, as well as in the recommendations contained in the report of the Group of Governmental Experts.

12. The following comments relate to the recommendations of the Group of Governmental Experts on International Co-operation to Avert New Flows of Refugees:

(a) Paragraph 66 (d): The catalogue of reasons for discrimination of certain population groups appears too narrow. Because of this, and also in order to obtain as uniform a system of basic criteria in international legislation as possible, there should be made a maximum utilization of already existing and generally accepted definitions, and especially article 2, paragraph 1, of the International Covenant on Civil and Political Rights of 1966: "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status";

(b) Paragraph 70 (b): The expression should rather be "full information" instead of "fuller information", for it is not clear in respect to what it is to be fuller;

(c) Paragraph 70 (d): Perhaps simply "effective" and not "more effective".

PORTUGAL

[Original: French]

[25 January 1990]

1. The question of mass exoduses is of particular concern at present, and in certain regions of the world such exoduses have attained disquieting proportions.

2. As mentioned in the texts in reference, every effort must be made to avert such situations, by taking effective steps to ensure the full application of the international legal instruments on the protection and promotion of human rights.

3. International co-operation must be strengthened in this area, as the only means of averting massive refugee flows and of guaranteeing the necessary protection of refugees and displaced persons.

4. The flow of refugees into Portugal is insignificant compared to that in other countries and cannot be described as a large-scale migration. Our knowledge about such "mass exoduses" is therefore limited, as is the value of any views which we might express on this phenomenon. Suffice it to record that only between 1985 and 1988 604 requests for asylum were submitted to the Portuguese authorities.

5. The origin of many persons with refugee status seeking asylum in Portugal confirms that they are very often fleeing from war-stricken areas, where privations and prolonged suffering are inflicted upon the civilian population, always the first and the most severely affected victims of any conflict.

6. Only the restoration of peace will make it possible to prevent the exodus of refugees.

7. In other cases, people are forced to leave their countries by economic and social underdevelopment.

8. Most people seeking asylum in Portugal hope to find opportunities for employment and a standard of life which they could not attain in their former places of residence. They also seek better social services (education, medical and hospital care, social security, etc.).

9. The prevention of this specific, and in our case predominant, type of mass migration will only come about through the gradual and planned creation of sufficiently attractive economic and social conditions to ensure the stability of populations.

10. In both cases our country has made a distinct contribution, through international political and diplomatic efforts aimed at ending hostilities and by making use of the co-operation already established in many areas with the new Portuguese-speaking African States.

11. The promotion of peace, security, development and fundamental freedoms, in accordance with the resolutions of the General Assembly and of the Commission on Human Rights, has a decisive role in the lengthy process of resolving these problems, about which the international community must remain vigilant and concerned.

12. Increased support must be given to the Office of the United Nations High Commissioner for Refugees, which has rendered inestimable services in assisting and protecting many thousands of individuals deprived of protection and forced to abandon their countries in the defence of their security, their freedom and even their lives.

13. New States should be encouraged to join those which have already signed the 1951 Convention.

14. There is an urgent need for the information on this matter and on the co-ordination of the activities of the different United Nations organs to be

computerized. The internal co-operation of the Organization is of prime importance and the use of a computerized system will greatly enhance the Organization's efficiency and improve the results of its work.

15. This will ensure the more effective protection of the fundamental rights of displaced populations and of refugees.

SWEDEN

[Original: English]

[7 August 1990]

1. Sweden fully supports the recommendations made by the Group of Governmental Experts on International Co-operation to Avert New Flows of Refugees.

2. The Government of Sweden also submits a booklet entitled A Comprehensive Refugee and Immigration Policy - an Outline from an Interdepartmental Study Group, in which strong emphasis is put on the role of the United Nations in averting refugee flows.

TUNISIA

[Original: French]

[1 June 1990]

1. The Tunisian Government wishes to express its condemnation and its deep concern regarding the prevailing situation in occupied Palestine and in the other occupied Territories, where fundamental human rights are subjected to daily and wide-scale violations by the Israeli occupying authorities.

2. The Tunisian Government draws attention to the dangers created by this situation and by the policy of the occupying Power intended to change the demographic composition of the occupied Territories and to establish colonies in these plundered areas in order to force the Palestinians to abandon their homeland.

3. The Tunisian Government therefore appeals to the competent organs of the United Nations to take measures to bring an end to these activities, which are both irresponsible and contrary to the Charter and to the other international instruments in the area of human rights, and to take steps, without delay, for the convocation of an international conference on the comprehensive settlement of the conflict in the Middle East.

TURKEY

[Original: English]

[9 August 1990]

1. The Government of Turkey has already presented its views on the issue of human rights and mass exoduses (see A/44/622, annex I). Turkey continue to attach great importance to this issue and is pleased to note that appropriate United Nations authorities and bodies give close attention to the problems relating to mass exoduses. The Government of Turkey would like to make some additional points with a view to contributing to future work on the subject.

2. In resolution 1990/52, the Commission on Human Rights states that sudden mass exoduses impose heavy burden upon developing countries with limited resources of their own. The Government of Turkey wishes to recall that this heavy economic burden imposed on developing countries can be alleviated only through appropriate international co-operation and burden-sharing.

3. The Group of Governmental Experts recommended, among others, that States should respect the right of refugees to receive adequate compensation in cases they do not wish to return. This is a very useful recommendation that needs further elaboration. To this end, it should be clarified how and under which conditions compensation could be claimed and obtained.

4. In its report on the issue, the Group of Governmental Experts reached the conclusion that massive flows of refugees might affect the political and social stability, as well as the economic development of the receiving State and carry adverse consequences for the economies of the countries of origin, and entire regions, thus endangering international peace and security. It goes without saying that such a situation is a matter of attention to the international community. However, it should be kept in mind that problems relating to mass exoduses concern, in the final analysis, the States directly involved and do not provide to other States any justification for violating the principle of non-intervention.

UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]

[3 August 1990]

1. The Union of Soviet Socialist Republics takes a positive view of the document on the subject of mass exoduses of refugees and displaced persons, prepared by the Group of Governmental Experts on the instructions of the Secretary-General. Satisfaction is expressed in the Soviet Union that the United Nations, in accordance with its Charter, is attempting to organize the co-operation of States in solving international problems of a humanitarian character. The Soviet Union also notes the substantial contribution made by the specialized agencies of the United Nations system to the development of international humanitarian co-operation.

2. The Soviet Union is ready to co-operate with the United Nations, its specialized agencies and all interested States with a view to preventing the emergence of factors that may lead to massive flows of refugees and displaced persons and, where it proves impossible to avert a mass exodus, to co-operate in providing such persons with the necessary humanitarian assistance.

3. The Soviet Union deeply appreciates the aid given to Soviet people by the United Nations and the whole world community in connection with the earthquake in Armenia in 1989. In the same year, the Soviet Union, together with other States Members of the United Nations, contributed to the voluntary repatriation of Namibian refugees. The aid provided by the Soviet Union in the repatriation of refugees from Namibia amounted to $US 2.9 million. The Soviet Union has in the past repeatedly given assistance on a bilateral basis to refugees from Africa, Asia and Latin America.

4. The Soviet Union reaffirms its desire to co-operate in the protection of human rights and fundamental freedoms and in joint efforts to develop international collaboration in solving existing humanitarian problems which are a cause of concern to the international community.

Notes

a/ United Nations, Treaty Series, vol. 189, No. 2545, p. 137.

b/ Ibid., vol. 606, No. 8791, p. 267.

c/ Ibid., vol. 1001, No. 14691, p. 45.

Annex II

Replies received from United Nations bodies, specialized agencies and intergovernmental organizations

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

[Original: English]

[31 July 1990]

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) attaches great importance to early warning activities as a mechanism to enhance the international capacity to prevent situations arising which give rise to refugee flows or, if that is not possible, to mitigate the consequences of refugee outflows and be better prepared for an emergency response. Against this background, the Office of the High Commissioner for Refugees has over recent years increasingly come to appreciate the significance of early warning activities for its own work on behalf of refugees. Indeed, UNHCR emergency management training programmes, which have been carried out since 1985, have regularly included a component on early warning for emergency response. Moreover, with a view to ensuring carefully planned responses at the earliest stage after a refugee flow has started, UNHCR is in the process of institutionalizing a "refugee emergency alert system". The system is, in effect, a method of information gathering and analysis which requires an assessment of developing situations against an agreed list of indicators, in order to forewarn UNHCR of the likely scope, nature and needs of refugee emergencies. In the same context, a UNHCR Working Group on Early Warning has been recently esablished, to serve as the focal point inside the Office on all matters relating to early warning and in particular to develop for the Office the framework for UNHCR's active participation in system-wide early warning activities.

2. As to early warning for prevention, prevention is not formally provided for in the statute. There has however been some consideration by the Office of the role it might, indeed should, play consistent with its humanitarian charater and its primary responsibility to persons outside their own countries and in need of international protection. The High Commissioner himself, in a speech to the forty-sixth session of the Human Rights Commission, stressed the need to respond comprehensively to the multifaceted refugee problems of today, drawing on the capabilities of the United Nations system as a whole. He specifically mentioned the importance of dealing with root causes in the framework of prevention.

3. The intergovernmental Executive Committee of UNHCR is also interested in examining broader aspects of protection and solutions to refugee problems and during its fortieth session in 1989 has called for the establishment of a Working Group on Solutions and Protection to examine these issues in depth, including their preventive and early warning aspects. Finally, it is important to note that the UNHCR Centre for Documentation on Refugees is the depositary of much useful information concerning refugee problems, maintains a computerized data base on refugee literature and is co-ordinating a pilot project for an international

refugee documentation network. In addition, UNHCR is developing data bases on national legislation and caseload concerning refugees. With regard to the co-operation between the Office for Research and the Collection of Information and other relevant parts of the United Nations system to enhance early warning activities, UNHCR agrees with the need for strengthening co-ordination as referred to in paragraph 8 of Human Rights Commission resolution 1990/52 and looks forward to more detailed discussions with that Office on methods and means for achieving a mutually beneficial information exchange.

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

[Original: English]

[21 August 1990]

1. FAO lacks information on the progress so far made by the Office for Research and the Collection of Information on the development of operational procedures for the participation of collaborating agencies, including the FAO Global Information and Early Warning System, in implementing the task envisaged by the General Assembly.

2. The conclusions and recommendations of the Group of Governmental Experts on International Co-operation to Avert New Flows of Refugees are primarily addressed to States in recognition of the predominantly political nature of the causes behind refugee movements.

3. Through the creation of a more favourable environment, economic and social development projects such as those carried out by FAO would, in the final analysis, avert migrations due to economic reasons. FAO has a long-standing policy of support to the small farmer, sanctioned by the World Conference on Agrarian Reform and Rural Development in 1979.

4. In the case of natural disasters, emergency activities under the FAO Office of Special Relief Operations are also destined to restore normal living conditions without the inhabitants abandoning the area.

5. A most significant FAO contribution to the follow-up to the resolutions of the General Assembly and the Commission on Human Rights is in the field of advance information and early warning. The FAO comments to the Joint Inspection Unit report of 21 May 1990, which have now been incorporated in the final version of the report, provide the necessary background information and proposals in this regard.

WORLD HEALTH ORGANIZATION

[Original: English]

[29 June 1990]

Policy

1. The Constitution of the World Health Organization states as follows:

> "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.
>
> "The health of all peoples is fundamental to the attainment of peace and security and is dependent upon the fullest co-operation of individuals and States."

2. On the occasion of the forty-third World Health Assembly (7-17 May 1990) the Director-General made the following statement:

> "WHO has long asserted the principle that health is a fundamental human right. As we enter the decade of the 1990s, human rights, social justice and ethical issues will become more and more important. Human rights in health and medicine must be seen within the wider framework of basic human rights, for the rights of the patient are the rights of man. They involve three related issues: freedom of expression and the right to be informed; respect for the integrity of the individual, including freedom to decide; and prohibition of discrimination of any kind. In the 1990s I intend to emphasize the human rights aspect of health in all our programme activities."

Refugees and mass exoduses: WHO response

3. The Director-General also reported to the forty-third World Health Assembly on the responses of WHO to the acute and long-term health problems of refugees, as follows:

Afghanistan:

> In response to Health Assembly resolution WHA41.33, and in collaboration with the Secretary-General's Special Co-ordinator, WHO has provided health assistance to the people of Afghanistan. This has included the provision and distribution of essential drugs, the reconstruction of health infrastructure, rehabilitation of the disabled, and the training of health personnel. This assistance has been provided from all directions: from Kabul, from Pakistan, from the Islamic Republic of Iran, and from the Union of Soviet Socialist Republics. The purpose is to facilitate the repatriation and resettlement of the Afghan refugees in the country. It is hoped that his reconciliation through health will bring about political stability and sustainable development for Afghanistan in the future.

Namibia:

In preparation for independence, WHO participated with other United Nations agencies in the repatriation to their country of some 42,000 Namibians. Medical check-ups, vaccinations and services were provided. A health sector review mission to Namibia resulted in a major effort to provide health policy options for the incoming Government. A shortage of senior health workers has been met by the deployment of volunteer doctors. WHO, with UNDP, has helped to mobilize bilateral and non-governmental assistance, and to provide rapid financial support for emergency and contingency planning.

In reponse to Health Assembly resolution WHA42.1, WHO has redoubled its efforts to provide technical support to improve the health of the Palestinian people in the occupied territories. Missions have been undertaken for needs assessment studies relating to emergency medical care, nutrition requirements, and hospital and health service facilities. In January 1990 a WHO mission visited Jerusalem, the West Bank and Gaza to develop a co-ordinated technical support programme, which has the agreement and support of a number of Member States and other organizations. This planned programme includes the establishment of primary health care centres and emergency facilities, the provision of related medical supplies and equipment, and the training of health personnel. Support has been pledged, and contributions are being received from many donors in cash or in kind.

WHO, in collaboration with UNHCR, is preparing repatriation plans for refugees from Cambodia and Mozambique.

Action taken by the forty-third World Health Assembly

4. The forty-third World Health Assembly discussed in detail the health and medical assistance required in Lebanon, by displaced persons in Cyprus, by the liberation struggle in southern Africa and for the reconstruction and development of Namibia.

ORGANIZATION OF AMERICAN STATES

[Original: English]

[24 May 1990]

1. While the Inter-American Commission on Human Rights has referred to masses of refugees in its various reports during the years, it has not conducted studies *per se* on the subject.

2. Moreover, during the past year the Commission has not published reports referring to this specific topic.

Annex III

Replies received from non-governmental organizations

INTERNATIONAL FEDERATION TERRE DES HOMMES

[Original: French]

[15 August 1990]

1. The International Federation Terre des Hommes subscribes in particular to paragraph 70 (c) of the report of the Group of Governmental Experts (A/41/324, annexes) and would like to see increased co-ordination between the competent United Nations organs and the non-governmental organizations in consultative status, in order to obtain the information mentioned in that paragraph. The non-governmental organizations are in direct contact with the most underprivileged populations - the ones most likely to cause massive refugee flows in the near future.

2. It is safe to predict that the flow of refugees from the developing countries to the wealthy countries will not diminish. New restrictions placed by the Western countries on immigration, for example, have only made the status of refugee more attractive to poor populations. Europe and North America will not be able to remain as islands of prosperity surrounded by a heavily populated and increasingly impoverished third world. There are bound to be further migrations of populations from the South to the North. One of the most effective measures to prevent this situation is development aid, but a carefully thought out development which includes the democratization of structures, true popular participation, agrarian reforms, access to small-scale credit facilities, improved public education etc.

3. The Federation also subscribes, without reserve, to paragraph 72 of the report and suggests that the competent organs of the United Nations should intensify their co-operation with the non-governmental institutions in that area too. The non-governmental organizations administer a great many development projects of the kind referred to in paragraph 72. It should also be remembered that a considerable volume of private development assistance is administered by the non-governmental organizations.

4. The Federation also suggests that particular attention should be given to the problem of displaced persons inside their own countries and of national refugees, who do not benefit from the protection of international institutions. A study should be made of the various causes of these phenomena, in order to prevent their continued growth.

5. Finally, the Federation suggests that the competent organs of the United Nations should give very special attention to displaced and refugee children. Children constitute more than half the total population of refugees and this situation will only worsen if the conditions of armed conflict and insecurity which prevail in certain areas do not improve. Refugee children are doubly vulnerable,

both as children and as refugees, and uprooting them is more likely to have pernicious and long-term consequences on their health, social development, schooling and behaviour.

LEAGUE OF RED CROSS AND RED CRESCENT SOCIETIES

[Original: English]

[1 August 1990]

1. The League has followed developments since Prince Sadruddin Aga Khan submitted his report on the relationship between gross violations of human rights and refugee movements in 1982 and the General Assembly set up the Group of Governmental Experts on International Co-operation to Avert New Flows of Refugees.

2. Questions of mutual concern to the United Nations system and the Red Cross and Red Crescent Movement relating to people involuntarily uprooted were discussed at the twenty-fifth International Conference of the Red Cross (Geneva, 1986). The International Conference is attended by those Governments which have ratified the Geneva Conventions and National Red Cross and Red Crescent Societies.

3. The next International Conference is to be held in 1991, and States will once again be called upon to adhere to their obligations under international conventions, in particular in regard to the respect of human rights.

4. The League continues to believe that refugee questions must be one of its principal concerns, and its small refugee unit was recently upgraded to the status of Department with a view to expanding its expertise in this area of work over the coming months and years.

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REPORT OF THE SPECIAL COMMITTEE TO INVESTIGATE ISRAELI PRACTICES AFFECTING THE HUMAN RIGHTS OF THE PALESTINIAN PEOPLE AND OTHER ARABS OF THE OCCUPIED TERRITORIES

Report of the Secretary-General

(in pursuance of General Assembly resolution 44/48 A)

1. The General Assembly, at its forty-fourth session, adopted resolutions 44/48 A to G of 8 December 1989 concerning the reports of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories (A/44/352 and A/44/599). By resolution 44/48 A, the General Assembly, inter alia, demanded that Israel desist forthwith from a number of policies and practices mentioned in the resolution.

2. On 14 March 1990, the Secretary-General addressed a note verbale to the Minister for Foreign Affairs of the State of Israel, in which he requested, in view of his reporting responsibilities under the resolution, that the Minister for Foreign Affairs inform him of any steps his Government had taken or envisaged taking in implementation of the relevant provisions of the resolution.

3. No reply had been received at the time of the preparation of the present report.

4. In paragraph 19 of resolution 44/48 A the Assembly reiterated its call upon all States not to recognize any changes carried out by Israel, the occupying Power, in the occupied territories and to avoid actions which might be used by Israel in its pursuit of the policies of annexation and colonization or any of the other policies and practices referred to in the resolution.

5. In light of paragraph 19 of the resolution, the Secretary-General, on 14 March 1990, also addressed notes verbales to the Ministers for Foreign Affairs of all other States, in which he requested them to inform him of any measures their Governments had taken or envisaged taking in implementation of the resolution.

Replies to the note verbale were received from Chad, Cuba, Czechoslovakia, the Holy See, New Zealand, Poland and the Ukrainian Soviet Socialist Republic.

6. In paragraph 24 (d) of resolution 44/48 A the Assembly requested the Secretary-General: to ensure the widest circulation of the reports of the Special Committee and of information regarding its activities and findings, by all means available, through the Department of Public Information of the Secretariat and, where necessary, to reprint those reports of the Special Committee that are no longer available.

7. In response to paragraph 24 (d) of resolution 44/48 A, the Department of Public Information undertook the following activities:

(a) A booklet published by the Department in 1985, in describing the work of the Special Committee, deals specifically with the human rights situation in the West Bank (including East Jerusalem), the Gaza Strip and the Syrian Arab Golan. This booklet was revised, updated and distributed worldwide in late 1989. Another booklet, published in 1986, deals generally with the question of Palestine and also covers the subject of human rights in the occupied territories. This booklet was revised and updated in 1990. The English version has been distributed world wide; the other four languages (Arabic, German, French, Spanish) will be released soon. A brochure on the International Day of Solidarity with the Palestinian People, which has been distributed worldwide in English, has been translated into French and Spanish to be distributed in time for the Solidarity Day on 29 November 1990;

(b) The question of human rights in the occupied Palestinian territory was covered by the Department's press, radio and visual services whenever it was discussed in United Nations bodies, including the General Assembly, the Security Council, the Human Rights Commission and other intergovernmental bodies. The output of those services was used extensively by the Department's network of United Nations information centres around the world;

(c) The Department issued press releases on the mission to the Middle East undertaken by the Special Committee;

(d) News media fact-finding missions to the Middle East, organized annually, bring around 10 to 15 high-level journalists from all over the world to the region, allowing them an opportunity to understand the Middle East conflict first hand. In addition, media representatives also participate in two annual regional encounters and series of national encounters organized by the Department. The fact-finding missions and encounters both deal comprehensively with the situation in the Middle East in general and the question of Palestine in particular, which include an assessment of the human rights conditions in the occupied Palestinian territory. During 1990, regional encounters were held in Buenos Aires for North and Latin American and Caribbean regions and in Singapore for the Asia and Pacific region. Ten national encounters were held in Europe, Asia, the Caribbean and Latin America.

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REPORT OF THE SPECIAL COMMITTEE TO INVESTIGATE ISRAELI PRACTICES AFFECTING THE HUMAN RIGHTS OF THE PALESTINIAN PEOPLE AND OTHER ARABS OF THE OCCUPIED TERRITORIES

Report of the Secretary-General

(in pursuance of General Assembly resolution 44/48 B)

1. The present report is submitted in pursuance of General Assembly resolution 44/48 B of 8 December 1989, the operative part of which reads as follows:

"The General Assembly,

"...

"1. Reaffirms that the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, is applicable to the Palestinian and other Arab territories occupied by Israel since 1967, including Jerusalem;

"2. Condemns once again the failure of Israel, the occupying Power, to acknowledge the applicability of the Convention to the territories it has occupied since 1967, including Jerusalem;

"3. Strongly demands that Israel acknowledge and comply with the provisions of the Convention in the Palestinian and other Arab territories it has occupied since 1967, including Jerusalem;

"4. Urgently calls upon all States parties to the Convention to exert all efforts in order to ensure respect for and compliance with its provisions in the Palestinian and other Arab territories occupied by Israel since 1967, including Jerusalem;

"5. Requests the Secretary-General to report to the General Assembly at its forty-fifth session on the implementation of the present resolution."

2. On 14 March 1990, the Secretary-General addressed a note verbale to the Minister for Foreign Affairs of the State of Israel, in which he requested, in view of his reporting responsibilities under the resolution, that the Minister for Foreign Affairs inform him of any steps his Government had taken or envisaged taking in implementation of the relevant provisions of the resolution.

3. No reply had been received at the time of the preparation of the present report.

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Report of the Secretary-General

(in pursuance of General Assembly resolution 44/48 C)

1. The present report is submitted in pursuance of General Assembly resolution 44/48 C of 8 December 1989, the operative part of which reads as follows:

"The General Assembly,

"...

"1. Determines that all such measures and actions taken by Israel in the Palestinian and other Arab territories occupied since 1967, including Jerusalem, are in violation of the relevant provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and constitute a serious obstacle to the efforts to achieve a comprehensive, just and lasting peace in the Middle East and therefore have no legal validity;

"2. Strongly deplores the persistence of Israel in carrying out such measures, in particular the establishment of settlements in the Palestinian and other occupied Arab territories, including Jerusalem;

"3. Demands that Israel comply strictly with its international obligations in accordance with the principles of international law and the provisions of the Geneva Convention;

"4. Demands once more that Israel, the occupying Power, desist forthwith from taking any action that would result in changing the legal status,

geographical nature or demographic composition of the Palestinian and other Arab territories occupied since 1967, including Jerusalem;

"5. Urgently calls upon all States parties to the Geneva Convention to respect and to exert all efforts in order to ensure respect for and compliance with its provisions in all Palestinian and other Arab territories occupied by Israel since 1967, including Jerusalem;

"6. Requests the Secretary-General to report to the General Assembly at its forty-fifth session on the implementation of the present resolution."

2. On 14 March 1990, the Secretary-General addressed a note verbale to the Minister for Foreign Affairs of the State of Israel, in which he requested, in view of his reporting responsibilities under the resolution, that the Minister for Foreign Affairs inform him of any steps his Government had taken or envisaged taking in implementation of the relevant provisions of the resolution.

3. No reply had been received at the time of the preparation of the present report.

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Report of the Secretary-General

(in pursuance of General Assembly resolution 44/48 D)

1. The present report is submitted in pursuance of General Assembly resolution 44/48 D of 8 December 1989, the operative part of which reads as follows:

"The General Assembly,

"...

"1. Deplores the arbitrary detention or imprisonment of thousands of Palestinians as a result of their resistance against occupation in order to attain self-determination;

"2. Calls upon Israel, the occupying Power, to release all Palestinians and other Arabs arbitrarily detained or imprisoned;

"3. Requests the Secretary-General to report to the General Assembly as soon as possible but not later than the beginning of its forty-fifth session on the implementation of the present resolution."

2. On 14 March 1990, the Secretary-General addressed a note verbale to the Minister for Foreign Affairs of the State of Israel, in which he requested, in view of his reporting responsibilities under the resolution, that the Minister for Foreign Affairs inform him of any steps his Government had taken or envisaged taking in implementation of the relevant provisions of the resolution.

3. No reply had been received at the time of the preparation of the present report.

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Report of the Secretary-General

(in pursuance of General Assembly resolution 44/48 E)

1. The present report is submitted in pursuance of General Assembly resolution 44/48 E of 8 December 1989, the operative part of which reads as follows:

"The General Assembly,

"...

"1. Strongly deplores the continuing disregard by Israel, the occupying Power, of the relevant decisions of the Security Council and resolutions of the General Assembly;

"2. Demands that the Government of Israel, the occupying Power, rescind the illegal measures taken by the Israeli authorities in deporting Palestinians and that it facilitate their immediate return;

"3. Calls upon Israel, the occupying Power, to cease forthwith the deportation of Palestinians and to abide scrupulously by the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949;

"4. Requests the Secretary-General to report to the General Assembly as soon as possible but not later than the beginning of its forty-fifth session on the implementation of the present resolution."

2. On 14 March 1990, the Secretary-General addressed a note verbale to the Minister for Foreign Affairs of the State of Israel, in which he requested, in view of his reporting responsibilities under the resolution, that the Minister for Foreign Affairs inform him of any steps his Government had taken or envisaged taking in implementation of the relevant provisions of the resolution.

3. No reply had been received at the time of the preparation of the present report.

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Report of the Secretary-General

(in pursuance of General Assembly resolution 44/48 F)

1. The present report is submitted in pursuance of General Assembly resolution 44/48 F of 8 December 1989, the operative part of which reads as follows:

"The General Assembly,

"...

"1. Strongly condemns Israel, the occupying Power, for its refusal to comply with the relevant resolutions of the General Assembly and the Security Council, particularly Council resolution 497 (1981), in which the Council, inter alia, decided that the Israeli decision to impose its laws, jurisdiction and administration on the occupied Syrian Arab Golan was null and void and without international legal effect and demanded that Israel, the occupying Power, should rescind forthwith its decision;

"2. Condemns the persistence of Israel in changing the physical character, demographic composition, institutional structure and legal status of the occupied Syrian Arab Golan;

"3. Determines that all legislative and administrative measures and actions taken or to be taken by Israel, the occupying Power, that purport to alter the character and legal status of the Syrian Arab Golan are null and void and constitute a flagrant violation of international law and of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and have no legal effect;

"4. Strongly condemns Israel for its attempts to impose forcibly Israeli citizenship and Israeli identity cards on the Syrian citizens in the occupied Syrian Arab Golan, and calls upon it to desist from its repressive measures against the population of the Syrian Arab Golan;

"5. Calls once again upon Member States not to recognize any of the legislative or administrative measures and actions referred to above;

"6. Requests the Secretary-General to report to the General Assembly at its forty-fifth session on the implementation of the present resolution."

2. On 14 March 1990, the Secretary-General addressed a note verbale to the Minister for Foreign Affairs of the State of Israel, in which he requested, in view of his reporting responsibilities under the resolution, that the Minister for Foreign Affairs inform him of any steps his Government had taken or envisaged taking in implementation of the relevant provisions of the resolution.

3. No reply had been received at the time of the preparation of the present report.

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Report of the Secretary-General

(in pursuance of General Assembly resolution 44/48 G)

1. The present report is submitted in pursuance of General Assembly resolution 44/48 G of 8 December 1989, the operative part of which reads as follows:

"The General Assembly,

"...

"1. Reaffirms the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the occupied Palestinian territory, including Jerusalem, and other Arab territories occupied by Israel since 1967;

"2. Condemns Israeli policies and practices against Palestinian students and faculties in schools, universities and other educational institutions in the occupied Palestinian territory, especially the opening of fire on defenceless students, causing many casualties;

"3. Also condemns the systematic Israeli campaign of repression against and closing of universities, schools and other educational and vocational institutions in the occupied Palestinian territory, in large numbers and for prolonged periods, restricting and impeding the academic activities of Palestinian universities by subjecting the selection of courses, textbooks and educational programmes, the admission of students and the appointment of faculty members to the control and supervision of the military occupation authorities, in flagrant contravention of the Geneva Convention;

"4. Demands that Israel, the occupying Power, comply with the provisions of that Convention, rescind all actions and measures against all educational institutions, ensure the freedom of those institutions and refrain forthwith from hindering the effective operation of the universities, schools and other educational institutions;

"5. Requests the Secretary-General to report to the General Assembly as soon as possible but not later than the beginning of its forty-fifth session on the implementation of the present resolution."

2. On 14 March 1990, the Secretary-General addressed a note verbale to the Minister for Foreign Affairs of the State of Israel, in which he requested, in view of his reporting responsibilities under the resolution, that the Minister for Foreign Affairs inform him of any steps his Government had taken or envisaged taking in implementation of the relevant provisions of the resolution.

3. No reply had been received at the time of the preparation of the present report.

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TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Torture and inhuman treatment of children in detention in South Africa

Report by the Secretary-General

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I. INTRODUCTION

1. In resolution 5 (XXXVII) of 23 February 1981, the Commission on Human Rights requested the Ad Hoc Working Group, in co-operation with the Special Committee against Apartheid, to study the effects of the policy of apartheid on black women and children in South Africa, in conformity with General Assembly resolution 35/206 N of 16 December 1980. Consequently, a mission of enquiry was held in London from 29 June to 3 July 1981 and the Working Group prepared a report which dealt, inter alia, with the question of children in prison as well as the treatment of children involved in political trials (E/CN.4/1497, paras. 89-106).

2. In subsequent reports, the Working Group continued to concern itself with this question and examined the prevalent conditions in prison as they affected children and especially the treatment of children in prison (see E/CN.4/1986/9, paras. 55-60; E/CN.4/AC.22/1987/1, paras. 80-94; E/CN.4/1988/8, paras. 68-91).

3. On 15 December 1989, the General Assembly adopted resolution 44/143, entitled "Torture and inhuman treatment of children in detention in South Africa and Namibia", in which it, inter alia, requested all relevant United Nations bodies, specialized agencies and non-governmental organizations to intensify the world-wide campaign aimed at drawing attention to, monitoring and exposing those inhuman practices; requested the Commission on Human Rights to continue to pay special attention to the question of detention, torture and other inhuman treatment of children in South Africa; requested the Secretary-General to submit a report to it at its forty-fifth session on the implementation of the resolution; and decided to consider the question at its forty-fifth session under the agenda item entitled "Torture and other cruel, inhuman or degrading treatment or punishment".

4. In its resolution 1990/11 of 23 February 1990, the Commission on Human Rights, inter alia, reiterated its vigorous condemnation of the detention, torture and inhuman treatment of children in South Africa as well as the demands expressed by the General Assembly in this regard and appealed to the international community to adopt concrete and effective measures to bring pressure to bear against the Government of South Africa until it dismantles apartheid and abandons all inhuman practices associated with this policy. It further requested the Ad Hoc Working Group of Experts on southern Africa to pay special attention to the question of detention, torture and other inhuman treatment of children in South Africa and to report to the Commission at its forty-seventh session.

5. The Ad Hoc Working Group of Experts is no longer charged with the responsibility of conducting an inquiry into the situation of children in Namibia, since it achieved its long-awaited independence in March 1990.

II. INFORMATION RECEIVED FROM UNITED NATIONS BODIES, SPECIALIZED AGENCIES AND NON-GOVERNMENTAL ORGANIZATIONS

6. In keeping with previous practice, and in pursuance of paragraph 5 of General Assembly resolution 44/143 and paragraph 11 of Commission on Human Rights resolution 1990/11, information was requested from the United Nations Centre against Apartheid, the United Nations Children's Fund, the International Labour Organisation, the World Health Organization, and 75 intergovernmental organizations. Although interim replies have been received from some of those bodies, detailed replies are still awaited.

7. The Ad Hoc Working Group of Experts on southern Africa carried out its traditional biennial field visit to front-line States in Africa from 20 August to 12 September 1990. During that mission, on which the Group will report in full to the Commission on Human Rights at its forty-seventh session, the Group received a total of 64 witnesses, 12 of whom were under the age of 18. On the basis of the most recent testimony received, the Group has expressed concern that ill-treatment of children in detention appears to be as widespread as before.

III. RELEVANT EXCERPTS FROM THE LATEST REPORT OF THE AD HOC WORKING GROUP OF EXPERTS ON SOUTHERN AFRICA

8. In its latest report to the Commission on Human Rights at its forty-sixth session (E/CN.4/1990/7), the Ad Hoc Working Group of Experts referred to the question of the treatment of children and adolescents as follows:

"Chapter V: Treatment of children and adolescents

"207. The Criminal Procedure Act 1977 requires that children between the ages of seven and 18 shall be heard in juvenile courts. The only difference between these and ordinary criminal courts is that trials of juveniles are held in camera, and the defendants may be assisted by their parents or guardians. However, the courts are only obliged to inform the parents or guardians of a child's arrest and court appearance if the parents or guardians reside in the same magisterial district as the court and are traceable without delay. It is therefore possible for a child to be arrested, held, tried, convicted and jailed without the knowledge of his or her parents. As far as detention without trial is concerned, there are no special provisions for children; detention is in effect imprisonment; therefore, the State does not abide by the Child Care Act of 1983. There are severe restrictions on visits by parents, relatives and legal practitioners. Visits are a privilege that has to be fought for, not a right. Lawyers must obtain permits for each visit to every detainee. Gaining access to detainees is therefore an extremely arduous process.

"208. Under the emergency regulations, child detainees can be held indefinitely and without the rights of other long-term prisoners, such as the right to communicate with the outside world, the right to study or read, or to consult doctors of their choice. The detainee has only two rights in detention: access to a Bible and half an hour or an hour of exercise per day.

"209. The Working Group is deeply concerned that, in some cases, children were being incarcerated for as long as three years without being charged or tried. During this period, they had no access to any educational facility and the break in their schooling would inevitably reflect on their future career and life in general. Further, they were bound to be adversely affected by the adult and often hardened criminals, from whom they were not kept separated.

"210. When detained children are released, usually without even being charged, severe restrictions are imposed on them. A case in point is that of Cecil Mowela, of Soweto, who was 16 years old when he was detained in 1988. According to information received by the Working Group, he spent one year in detention and was released in March 1989, after being among the first of 20 detainees to embark on the nationwide hunger strike. Upon his release, he was served with restriction orders which restricted him to the magisterial district of Johannesburg. He was prevented from taking part, in any manner whatsoever, in the activities of Soweto Students' Congress, Soweto Youth Congress or the Student Representative Council at his school. He was restricted to his home between the hours of 6.00 p.m. and 5.00 a.m. and had to report to the police station daily. He was also banned from attending meetings and from criticizing any acts or policies or proposed acts of the South African Government or local authorities.

"211. The representative of Amnesty International (753rd meeting) informed the Working Group that, between June 1986 and June 1989, some 32,500 persons were estimated by human rights monitoring groups to have been detained under the consecutive states of emergency, most of them in the early period of the emergency. Of those detained, 9,800 are believed to have been children under the age of 18 years. Thirty-nine of them were still subject to restriction orders on 1 March 1989. Reports from human rights monitoring groups about children held in custody suggested that between 80 and 90 per cent have alleged that they experienced torture while in detention. Although the 1983 Child Care Act states that no child under 18 may go to prison, a court ruling in 1987 reportedly held that the state of emergency regulations overrode this. Consequently, children have no special protection under these regulations.

"212. A representative of the African National Congress (749th meeting) reported that, of 64 adolescents known to be in detention in March 1989 in the Pretoria, Witwatersrand and Vereeniging (PWV) area, two were aged 15, 12 were 16 or 17 years old, and 33 were 18. Fourteen of these children had been in detention since 1986, including one 16-year old; one had been detained since 1987 and 22 since 1988; 27 were detained in 1989.

"213. It is difficult for the Working Group to ascertain exactly how many children are in detention in South Africa at present. Information available usually refers to only specific areas, such as the PWV area as mentioned above, and no figures covering the whole country appear to exist.

"214. In a document dated 30 June 1989 submitted to the Working Group by Amnesty International, it was reported that the following 12 school children under the age of 18 had been held in detention under the emergency regulations, without being charged with any offence: Philip Khanyile (16) of Pietermaritzburg, Petrus Labasi (16) of Soweto, Jacob Mabilo (16) of Soweto, Isaac Matsipe (16) of Soweto, Thokozami Mchunu (17) of Pietermaritzburg, April Mohau (17) of Petchefstroom, Sipho Mngomezulu (17) of Pietermaritzburg, Marcus Murubani (17) of Soweto, Basil Ntungane (17) of Cape Town, Christopher Theletsani (16) of Soweto, Aubrey Sipho Zuma (16) of Soweto, Bafana Zwane (16) of Soweto. Amnesty International expressed concern that they may be at risk of ill-treatment, and called for their immediate and unconditional release unless they were to be charged with a recognizable criminal offence. Further, it was pointed out that April Mohan had been detained three times before under the state of emergency, and that Petrus Labasi had been detained three times in 1989. The students from Potshefstroom, Pietermaritzburg and Cape Town who had been arrested in April and May 1989 were being held under the state of emergency regulations issued in 1988. The five students from Soweto had been arrested on 14 and 15 June 1989, apparently in connection with unrest in Soweto schools, and were being held under the state of emergency regulations issued on 9 June 1989. Section 3 of both these regulations allows a member of the security forces to arrest any person if they deem it 'necessary for the safety of the public or the maintenance of public order'.

"215. The same repo . further stated that, in addition to the above-named detainees, 10 other students from Meadowlands, Soweto, had been arrested on 29 May 1989 and detained for a week without charge, while two other Potshefstroom students arrested on 20 April 1989 had been released on 21 June 1989.

"216. However, in a letter dated 27 September 1989 in reply to a telex from the Special Rapporteur of the Commission on Human Rights on the Question of Torture dated 5 July 1989, the Government of South Africa denied allegations of the death of children in detention, as follows:

> 'It is correct that 12 juveniles were at that time being detained under the State of Emergency arising from violence perpetrated in the Pietermaritzburg area. They were subsequently released.
>
> 'The South African Ministry of Law and Order rejects allegations that between 80 and 90 per cent of juveniles in detention have been tortured and that between 13 and 20 died in police custody between 1984 and 1988 as false and malicious. The South African Ministry of Law and Order is prepared to investigate any substantiated allegations of this nature but no facts have been produced by anyone alleging such torture and deaths.'

"217. According to further information submitted to the Working Group by Amnesty International, 1/ the following eight Durban school students under 18 are reported to have been detained between 19 and 21 June 1989:

"Name	Sex/Age
Emmanuel Mduduzi Hlongwane	Male (17)
Progress Sipho Mhlongo	Male (17)
Jimmy Mhlongo	Male (16)
Cyril Nhlanhla Mkhize	Male (14)
Themba Qaphelani Mkhize	Male (17)
Sanele Christopher Shinga	Male (17)
Zamokwakhe Sofunani	Male (16)
Thelelani Ximba	Male (14)

"218. A report which was brought to the attention of the Working Group during the period under consideration stated that Emmanuel Khanyile and Bjekani Phewa were sentenced to death for the murder of seven kwaMashu schoolboys. The two convicted men were alleged to be members of Inkatha. They were among 11 persons standing trial in the Durban Supreme Court for kidnapping, murder and attempted murder. The case reportedly arose in March 1986, when armed men from Lendelani hijacked taxis, drove through kwaMashu, and kidnapped children of school-going age. Eight of them were assaulted and stabbed. One of them survived and gave evidence of what Mr. Justice Broom during the trial called 'an efficient, well organized, well executed slaughter'. Four of the accused were acquitted, and the remaining 5 were sentenced to between 8 and 16 years' imprisonment for kidnapping or being accessory before the fact of the murders. 2/

"219. The Ad Hoc Working Group noted with grave concern the information contained in the Amnesty International report 3/ according to which, between June 1988 and February 1989, more than 200 children under the age of 18 had been detained without charge under the emergency regulations. Although most of them apparently had been released in the period from April 1989 to the reimposition of the state of emergency in June 1989, the report stated that about 40 children had been placed immediately under restriction orders limiting their freedom of movement and association, and effectively prohibiting them from any political activity.

"220. In a report submitted by a member of the South African Human Rights Commission, entitled 'Children and Repression 1987-1989', it was stated that the following children had died in detention, police custody or in mysterious circumstances:

"Name and Age	Date	Reason
"Basenki Botsani (12)	Jan. 1989	Shot while trying to escape arrest after being seen allegedly breaking and entering.
"Willem Diebin (12)	Mar. 1989	Shot by an off-duty policeman who opened fire on people in Blikkies township. The policeman has been suspended and charged with murder and attempted murder.
"Dinana Mbetheni (12)	Apr. 1989	Found hanging from an electric wire tied to a bar in his cell at a police station in the Ciskei.

"221. It was brought to the attention of the Working Group that, in his annual report for the year 1987/88, the Auditor General stated that the South African Police paid out R3,449,733 in compensation for 465 claims. Of this, R522,000 was paid for unlawful arrest, R1,800,000 for injuries as a result of police action in riots, R593,000 for injuries as a result of normal police action, and the remainder, nearly R3,500,000 for injuries to bystanders, loss of maintenance and income, loss of and damage to property, medical, funeral and other expenses, and a R3,487 claim for loss of Government money through negligence. Some of these cases relate to claims made by parents on behalf of their children. The majority of the widespread allegations of assault never get to court, for various reasons. They include the fear of intimidation and reprisals from the police, lack of evidence or finance, and, in the case of alleged assault and torture of children in detention, the fact that they are released after their wounds have healed. 4/

"222. In a written submission dated September 1989, forwarded to the Working Group by the International Defence and Aid Fund for South Africa (IDAF), entitled 'Children in South Africa: Repression and Resistance', it was reported that the emergency regulations gave the police and army extremely wide powers, with virtually no legally enforceable limits, and that they made no distinction between adults and minors. Referring to police and vigilante violence, the document gave the following instances of ill-treatment of children:

"(a) In March 1989, a 12-year old boy was killed and an 18-year old wounded when police opened fire on a crowd in Upington, Northern Cape. Witnesses said that the policemen, who alleged that they were being stoned, were drunk. 5/

"(b) In May 1989, a 16-year old boy, who wished to remain anonymous for fear of reprisals, spoke to a newspaper journalist of his two years of fear since being trapped under a pile of corpses of persons killed in a vigilante massacre in Natal. He was one of the estimated 20,000 displaced persons in the area. 6/

"(c) On 6 September 1989, election day, it was reported that more than 20 people had been killed during police attacks. Yvette Otto, aged 16, died after being shot in the chest at point-blank range by a policeman as she came out onto the street after visiting a friend. Patrick Miller, aged 13, was shot in the head and killed as he walked to the shops. A three-year old girl standing in a doorway with her mother was injured when she was hit in the face by birdshot. A community worker described helping about 50 children with injuries caused by shotgun fire and rubber bullets as well as by tear-gas. 7/

"223. The IDAF report further stated that children involved in resistance in educational institutions had experienced extensive deployment of 'security forces' against them. Special emergency regulations had been issued, controlling their movements during school hours and prohibiting the teaching or study of anything but the official syllabus. To break class boycotts, troops and police had roamed the streets in armoured vehicles, picking up and intimidating children suspected of boycotting schools.

"224. Armed with the wide powers given to the police and army, and protected by the indemnity against civil or criminal proceedings arising from acts 'performed in good faith' under the emergency regulations, the police and troops patrolling the streets in armoured vehicles had broken up gatherings by the use of tear-gas and rubber bullets or live ammunition, followed by arrests and detentions. It was reported that children had been foremost among their victims, particularly during school boycotts.

"225. It was stated in Special Report SR.2 of the South African Human Rights Commission entitled 'Days of Defiance: A special report on repression, 1 August and 6 September 1989' that, of the 252 persons detained at that time under emergency regulations, 20 were under 18 years of age, and 14 had been detained before.

"226. In an article on the responsibility of doctors towards detainees under the emergency laws, Mr. David McQuaid-Mason, Professor of Law at the University of Natal, Durban, urged the Medical Association of South Africa (MASA) to co-operate with medical human rights organizations and issue clear instructions to its members concerning the treatment of detainees, particularly in relation to ethical problems relating to conditions of treatment and confidentiality. He further stated that MASA was 'still equivocal' on crucial issues: it had not yet 'officially denounced the policy of apartheid, or detention without trial, or the detention of children, even though it had acknowledged that some detainees had been seriously abused'. 8/

"227. On 5 June 1989, the Federal Council of the Medical Association of South Africa unanimously adopted a code for handling children in places of detention, entitled 'Policy statement on discrimination in medical practice', which refers to, inter alia, the special responsibility of the arresting officer when dealing with children, the necessity of informing the parents within 24 hours of a child's arrest, and of releasing the child into the custody of the parents.

"228. The representative of the International Confederation of Free Trade Unions reported to the Working Group (747th meeting) that, although 22 children were announced as being imprisoned, it was believed that the true figure was probably nearer 2,000. The witness described how, in 1986, his aunt's house had been bombed by the 'Witwolves' ('white wolves') allegedly because his cousin was an activist in Kagozo, Transvaal. After the ensuing police check, his aunt's grandchild had been detained for 36 hours without anyone being informed of the child's whereabouts.

"229. After having heard the allegations presented to it, the Working Group condemns, without reservation, the lack of Government concern for the violation of the human rights of the children of South Africa in matters of freedom of movement and right to education and health.

"Notes

"1/ AI Index: AFR 53/25/89, dated 14 July 1989.

"2/ Weekly Mail, 10 to 16 February 1989.

"3/ AI Index: AFR 53/25/89, dated 14 July 1989.

"4/ Citizen, 14 February 1989.

"5/ IDAF Report, September 1989 (page 20); Cape Times, 20 March 1989.

"6/ Ibid.

"7/ Ibid.; Guardian, 7 to 8 September 1989; Times, 9 September 1989.

"8/ Weekly Mail, 2 February 1989."